

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested in light of the preceding amendments and following remarks. Claims 22-25 are pending in this application. By this Amendment, claim 26 is cancelled. By this Amendment, no claims are amended or added. Claim 22 is the independent claim.

**Rejections under 35 U.S.C. § 102**

The Examiner rejects claims 22-25 under 35 U.S.C. § 102 as being anticipated by Kondo (U.S. 2004/0146109, hereinafter "Kondo"). Initially, Applicants note that the Examiner has not indicated which paragraph of section 102 applies. None-the-less, Applicants will assume the Examiner meant section 102(e).

Applicants submit that Kondo is **not** prior art under section 102(e), as well as the other sections of 102. For instance, Kondo does **not** have a section 102(e) date. M.P.E.P. 706.02(f)(1) states:

(2) If the international application was filed on or after November 29, 2000, but did not designate the United States or was **not** published in English under PCT Article 21(2), do not treat the international filing date for prior art purposes. In this situation, do not apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. §102(a) or (b) of its publication date, or 35 U.S.C. §102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable).

The international application of Kondo was filed April 16, 2003, which is after November 29, 2000. Although the international application of Kondo designated the US, this application was **not** published in English. Rather, it was published in Japanese on October 30, 2003. Therefore, Kondo does not have a 102(e) date. Also, Applicants are not aware of any **later** U.S. applications that properly claimed the benefit of the international application of Kondo.

For additional support, Applicants direct the attention of the Examiner to **Example 5** of MPEP Section 706.02(f)(1) on page 700-34. Applicants submit that Example 5 covers this situation. "All references, whether the WIPO publication (e.g., WO/2003/090475), the U.S. patent application publication (US 2004/0146109), of an international application that was filed on or after November 29, 2000 (PCT app of Kondo was filed April 16, 2003), but was **not** published in English have **no** 35 U.S.C. 102(e) prior art date at all." See MPEP 702.02(f)(1). Because the WIPO publication of Kondo (WO/2003/090475) was published in **Japanese** on October 30, 2003 and the PCT application of Kondo was filed after November 29, 2000, Kondo does not have a 102(e) date.

Furthermore, "if the international application properly claimed priority / benefit to any earlier-filed U.S. application (whether provisional or nonprovisional), there would still be no 35 U.S.C. 102(e) date for all the references." See 706.02(f)(1). As a result, the fact that the PCT application of Kondo claims priority to earlier filed provisional applications (e.g., 60/378,643

filed on May 9, 2002 and 60/378,954 filed on May 10, 2002), does **not** give Kondo a 102(e) date.

In addition, Kondo does not qualify under 35 U.S.C. §102(a) or (b). For instance, the effective filing date for this application is March 3, 2004, which is the PCT international filing date. Because the publication date of the Kondo reference is July 29, 2004, the Kondo reference does not qualify as prior art under sections 102(a) or (b). The remaining sections of 102 are not applicable.

Concurrently with the filing of this Amendment, Applicants have submitted an English Translation of Korean Application No. 10-2003-0013198, filed March 3, 2003, to which this application claims priority. As a result, the October 30, 2003 international publication (Japanese) of Kondo cannot be applied under section 102.

Therefore, Applicants respectfully requests the Examiner to remove the Kondo reference under 35 U.S.C. 102, and to allow this application proceed to allowance.

**CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 22-25 in connection with the present application is earnestly solicited.

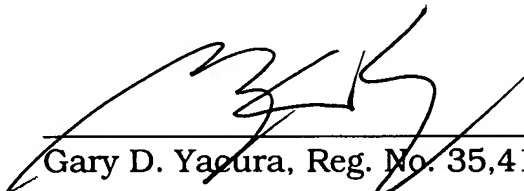
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By

  
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